

BEFORE THE SUPREME COURT OF THE STATE OF MISSISSIPPI**MISSISSIPPI COMMISSION ON
JUDICIAL PERFORMANCE****APPELLANT****VS.****NO. 2015-JP-00996-SCT****DAVID SHOEMAKE****APPELLEE****MOTION OF APPELLEE TO AMEND THE ORDER OF ARGUMENT
UNDER MISS. R. APP. P. 34(e) TO ALLOW APPELLEE TO
OPEN AND CONCLUDE ORAL ARGUMENT**

COMES NOW, Chancery Court Judge David Shoemake ("Judge Shoemake"), Appellee, by and through counsel, and moves this Court to amend the order of argument under Miss. R. App. P. 34(e) to allow Judge Shoemake to open and conclude the oral argument of the above cause currently slated for argument on December 8, 2015, and in support thereof would show as follows, to-wit:

1. On March 12, 2015, a hearing was conducted before a committee of the Mississippi Commission On Judicial Performance ("Commission") consisting of Commission Member Jimmy Morton and Alternate Commission Member Roy Campbell, III, into the Second Amended Formal Complaint filed by the Commission.

2. On May 11, 2015, the members of the Committee issued their Findings and Recommendations of the Committee ("Committee Findings") which recommended that Judge Shoemake be removed from office ; on June 12, 2015, the Commission considered the Committee Findings, adopted the Committee Findings as the recommendation of the Commission and issued its Commission Findings of Fact and Recommendation which recommended to this Court that Judge

Shoemake be removed from office and ordered to pay cost of \$5,882.67.

3. Being aggrieved by the decision of the Committee and Commission, Judge Shoemake has filed his brief herein challenging the findings and recommendations of both the Committee and Commission, asking that same be rejected and this matter be dismissed.

4. Pursuant to Rule 10(A) of the Rules of the Mississippi Commission on Judicial Performance, the Commission is required to file the record, its findings and recommendations and any dissents thereto with the Clerk of this Court; as a result of the filing by the Commission, the Commission is automatically listed as an appellant for purposes of such action although the Commission has not noticed an appeal nor, as a practical matter, could the Commission in good faith appeal its own decision.

5. Miss. R. App. P. 34(e), provides that Appellant is entitled to open and to conclude oral argument; however, Miss. R. App. P. 34(f) provides in the instance of a cross-appeal “the party filing the first notice of appeal shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree **or the court otherwise directs**”. (Emphasis added).

6. In the instant case, Judge Shoemake is the true appellant in this matter for it is Judge Shoemake that is aggrieved by the findings of the Committee and Commission and whose brief challenges the findings of the Committee and Commission, points out the errors and omissions by each and seeks reversal of the findings and dismissal of the proceeding; the current Appellant’s brief merely argues for affirmation of the findings and seeks no alternate relief as would any appellee in any other appeal from a trial court decision either in a civil matter where no cross-appeal is filed or from the Attorney General in an appeal from a criminal conviction.

6. In essence Judge Shoemake’s brief should be considered a cross-appeal for the

purposes of Miss. R. App. P. 34(f) and the Court has the discretion to allow Judge Shoemake to open and conclude the argument; as Judge Shoemake is truly challenging the decisions of the Committee and Commission and is the one who will be permanently and irreparably harmed by the decision of the Commission , it is in the best interest of justice that Judge Shoemake be allowed to open and conclude oral argument.

WHEREFORE, PREMISES CONSIDERED, Chancery Court Judge David Shoemake, Appellee, moves this Court for entry of an order amending the order of argument under Miss. R. App. P. 34(e) to allow Judge Shoemake to open and conclude the oral argument of December 8, 2015.

Respectfully submitted:

David Shoemake

November 16, 2015

By: /s/ Andrew J. Kilpatrick, Jr.
Andrew J. Kilpatrick, Jr. (MS Bar#3763)
Gore, Kilpatrick & Dambrino, PLLC
Post Office Box 901
Grenada, Mississippi 38902-0901
Tel: 662.226.1891
Fax: 662.226.2237
E-mail: akilpatrick@gorekilpatrick.com

Of Counsel:

William H. Jones (MS Bar# 3284)
Post Office Box 282/HWY 11
Petal, MS 39465
Tel: 601.545.8324
Fax: 601.545.8389
Email: joneswh@bellsouth.net

Counsel for Appellee

CERTIFICATE OF SERVICE

I, Andrew J. Kilpatrick, Jr., do hereby certify that I have this day electronically filed a true and correct copy of the foregoing Motion of Appellee to Amend the Order of Argument Under Miss. R. App. P. 34(e) to Allow Appellee to Open and Conclude Oral Argument with the Clerk of the Mississippi Supreme Court of Appeals using the MEC system which sent notification unto the following:

Darlene Ballard, Esq.
Bonnie Menapace, Esq.
Meagan C. Brittan
Mississippi Commission on Judicial Performance
660 North Street, Ste. 104
Jackson, Mississippi 39202

Further, I hereby certify that I have mailed by United States Mail, postage fully prepaid, the document to the following non-MEC Participants:

Judge Lee J. Howard
Commission Chairman
P.O. Box 1679
Starkville, Mississippi 39759

This the 16th day of November, 2015.

/s/ Andrew J. Kilpatrick, Jr.
Andrew J. Kilpatrick, Jr. (MS Bar#3763)
Gore, Kilpatrick & Dambrino, PLLC
Post Office Box 901
Grenada, Mississippi 38902-0901
Tel: 662.226.1891
Fax: 662.226.2237
E-mail: akilpatrick@gorekilpatrick.com